

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

APPLICANT: OTTOFY, GLYN DOCKET NO.: 4332P2728
SERIAL NO.: 10/705,310 EXAMINER: JONES, SCOTT E.
FILED: 11/10/2003 ART UNIT: 3714
TITLE: SYSTEM AND METHOD FOR PLAYING A TEAM GAMING
TOURNAMENT

Mail Stop Appeal Brief – Patents
Commissioner for Patents
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April 18, 2008

I hereby certify that on the 18th day of April, 2008, this correspondence is being filed electronically on EFS-Web.

/Karen J. Sepura/
Karen J. Sepura

AMENDED APPEAL BRIEF

Dear Sir:

This Amended Appeal Brief is submitted in support of the Appeal in the above-identified patent application, and is further submitted pursuant to the provisions of 37 CFR 41.37 and in response to a Notification of Non-Compliant Appeal Brief mailed on April 9, 2008.

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REAL PARTY IN INTEREST

The present application is owned by applicant Glyn Ottofy, who is the real party in interest.

RELATED APPEALS AND INTERFERENCES

There are no related appeals and/or interferences pending.

STATUS OF CLAIMS

The claims involved in this patent application, including the status of each of those claims, are as follows:

Claims 1-5: rejected.

Claim 6: cancelled.

Claims 7-16: rejected.

Claim 17: cancelled.

Claims 18-20: rejected.

The claims on appeal are as follows: Claims 1-5, 7-16 and 18-20.

STATUS OF AMENDMENTS

A final rejection of Claims 1-5, 7-16 and 18-20 was mailed on April 30, 2007. No amendments were filed subsequent to final rejection.

SUMMARY OF CLAIMED SUBJECT MATTER

The independent claims involved in this appeal are Claims 1, 11 and 12. Claims 1 and 11 are method claims. Claim 12 is an apparatus claim.

The subject matter of Claim 1 is a method for playing a team gaming tournament, in which a plurality of players enter a live poker gaming tournament to play against one another. *See, e.g.*, Specification, page 1, lines 16-23; page 7, lines 2-5 and 13-15; and page 18, lines 5-7. A plurality of teams is formed from the players who enter the tournament. *Id.* at page 7, lines 15-16. A placement finish is calculated for each team, according to a predetermined formula that depends on the number of players on each team and how those players perform in the tournament. *Id.* at page 7, lines 21-24 and page 8, lines 1-6.

Claim 11, another method claim, is also directed to playing a team gaming tournament. Claim 11 provides for the tournament to be conducted via a computer network, including at least one end-user computer (14) coupled to a server (12) via a network connection (11). *See, e.g.*, Specification, page 18, lines 5-7 and 14-18; Figure 1. The end-user computer (14) has a graphical display (16) portion that can display a browser window (*id.* at page 19, lines 10-15; Figure 1); the browser window, in turn, displays a live poker gaming tournament. *See, e.g.*, Specification, page 18, lines 24-27 and page 19, line 1. A plurality of users enters the live poker gaming tournament to play against one another. *Id.* at page 1, lines 16-23 and page 19, lines 1-9. A plurality of teams is formed from the users who enter the tournament. *Id.* at page 19, lines 1-9. Input from the users is sent to the server. *Id.* A placement finish is calculated for each team, according to a predetermined formula that depends on the number of users on each team and how those users perform in the tournament. *Id.*

The subject matter of Claim 12 is a server for providing a computer gaming tournament. The server (12) includes memory (19A) for storing program instructions and data (*see, e.g.*, Specification, page 18, lines 9-14; Figure 1) and a processor (18A) coupled to the memory for executing the program instructions. *Id.* The program instructions include those for displaying a browser window (*see, e.g.* Specification at page 18, lines 24-27 and page 19, line 1 and 10-15); displaying a live poker gaming tournament in the browser window (*id.* at page 18, lines 24-27 and page 19, line 1); permitting a plurality of users to enter the live poker gaming tournament to play against one another (*id.* at page 1, lines 16-23 and page 19, lines 1-9); forming a plurality of teams from the users who enter the tournament (*id.* at page 19, lines 1-9); receiving indications of user input from a plurality of user computers (*id.*); and calculating a placement finish for each team, according to a predetermined formula that depends on the number of users on each team and how those users perform in the tournament. *Id.*

GROUNDΣ OF REJECTION TO BE REVIEWED ON APPEAL

1. Whether Claims 1, 4-5, 7, 10-12, 15-16 and 18 are unpatentable under 35 U.S.C. § 102(b) over U.S. Patent No. 6,142,872 to Walker?
2. Whether Claims 8-9 and 19-20 are unpatentable under 35 U.S.C. § 103(a) over U.S. Patent No. 6,142,872 to Walker?
3. Whether Claims 2-3 and 13-14 are unpatentable under 35 U.S.C. § 103(a) over U.S. Patent No. 6,142,872 to Walker in view of U.S. Patent No. 5,755,621 to Marks?

ARGUMENT

1. Whether Claims 1, 4-5, 7, 10-12, 15-16 and 18 are unpatentable under 35 U.S.C. § 102(b) over U.S. Patent No. 6,142,872 to Walker et al.?

In the Final Office Action, the Examiner rejected Claims 1, 4-5, 7, 10-12, 15-16 and 18 based on Walker et al. (“Walker”). Applicant respectfully submits that this rejection was in error.

Walker concerns electronic gaming devices and is specifically directed to the team play of slot machines, in which players play against machines. Walker discusses “video poker machines” as falling under the category of slot machines. *See, e.g.* col. 4, lines 24-26. Walker fails to teach or reasonably suggest all aspects of the claims rejected under 35 U.S.C. § 102(b). In this regard, Walker emphasizes the team play of slot machines whereby the results obtained by each player on a team are combined in order to achieve a team game result. The resulting benefit is that each team member may be awarded a higher payout from a slot machine than he or she may have obtained by playing the slot machine alone. *See, e.g.* col. 2, lines 47-49 (“[t]he game results of each player on a given team are combined in a predefined manner to obtain a team game result.”); col. 3, line 66 through col. 4, lines 1-5 (“the slot server permits team-play of slot machines by a plurality of slot machine players using the slot machines. The game results of each player on a given team are combined in a predetermined manner, and the best overall game result, providing the highest payout, is provided to each of the team members.”). Walker notes that “[i]n this manner, team players are encouraged to support and cheer on one another and may compete against other teams.” Col. 4, lines 11-13. This “dramatically increase[s]” “the social and competitive aspects of slot machine play.” *Id.* at lines 14-15. Notably absent from Walker, however, is the limitation of the gaming tournament being a *live poker tournament* in which the

players compete *against one another*, as Applicant's independent Claims 1, 11 and 12 recite. Rather, while Walker casually mentions the "table game[] of poker (*see* Background of the Invention, col. 1, lines 11-13), as it relates to poker, Walker is directed only to video poker machines, not live poker.

Moreover, Applicant's recitation of a live poker tournament in which players compete against one another provides a key distinction from the slot/video gaming machines described in Walker. Critically, in live poker – where players compete against other players, as opposed to competing against machines – players have the ability to bluff or deceive other players. This critical element is not present in Walker. *See* Declaration Under 37 CFR § 1.132 of Richard Fitzhugh, filed on December 18, 2006 and included in the evidence appendix herewith. Live poker is a distinctly different game from video/slot poker, especially since the skill of bluffing or deception – which is critical to live poker – is missing entirely from video/slot poker. With video/slot poker, players do not play against one another. Rather, they play against machines, which deprives them of the ability to bluff.

Accordingly, Applicant's independent Claims 1, 11 and 12 are not anticipated under 35 U.S.C. § 102(b) by Walker. Claims 4-5, 7 and 10, which depend upon Claim 1, and Claims 15-16 and 18, which depend upon Claim 11 are also not anticipated under 35 U.S.C. § 102(b) by Walker. Applicant therefore respectfully submits that the rejection of Claims 1, 4-5, 7, 10-12, 15-16 and 18 was in error.

2. Whether Claims 8-9 and 19-20 are unpatentable under 35 U.S.C. § 103(a) over U.S.

Patent No. 6,142,872 to Walker et al.?

In the Final Office Action, the Examiner rejected Claims 8-9 and 19-20 based on Walker. Applicant respectfully submits that this rejection was in error. In this regard, the Examiner has failed to establish a *prima facie* case of obviousness, because Walker fails to teach or reasonably suggest the subject matter of the claims rejected under 35 U.S.C. § 103(a) and there is no motivation to modify the reference.

Claims 8-9 and 19-20 depend, respectively, upon Claims 1 and 11. The deficiencies of Walker as a teaching reference with respect to Claims 1 and 11 are discussed above and are incorporated herein by reference. For the same reasons that Claims 1 and 11 are not anticipated by and are patentable over Walker, as discussed above, Claims 8-9 and 19-20 are not obvious under Walker.

Further, as the Examiner has acknowledged, Walker “does not disclose limiting a number of said plurality of players to enter said gaming tournament to a predetermined number, requiring each said plurality of teams to comprise a predetermined minimum number of players, and limiting each said plurality of teams to a predetermined maximum number of players, in order to restrict access to a maximum number of players.” Final Office Action, p. 4.

Walker makes no suggestion that it could be modified to have gaming tournaments with, for example, a maximum of 100 players with teams of no less than three players and no more than five players. The ability to construct gaming tournaments having various minimum and maximum numbers of players and team members creates the exciting possibility of certain gaming tournaments that may appeal to three-person teams, whereas other gaming tournaments may appeal to two-person teams. While the Examiner refers to this feature as creating “a more

secure gaming environment for a casino” (Final Office Action, p. 4), in fact, this feature has nothing to do with security, but instead relates to creating exciting team play. Indeed, the Examiner’s reliance on Walker in this regard concerns security issues. Thus, the Examiner notes that “Walker does disclose player caps for the maximum number of players for *increased security*, as well as maintaining a manageable number of players per team.” Final Office Action, p. 4 (emphasis added). Thus, there is also no motivation to modify Walker in the manner suggested by the Examiner to reach Claims 8-9 and 19-20.

Accordingly, Applicant respectfully submits that the rejection of Claims 8-9 and 19-20 was in error.

3. Whether Claims 2-3 and 13-14 are unpatentable under 35 U.S.C. § 103(a) over U.S. Patent No. 6,142,872 to Walker et al. in view of U.S. Patent No. 5,755,621 to Marks et al.?

In the Final Office Action, the Examiner rejected Claims 2-3 and 13-14 based on Walker in view of Marks et al. (“Marks”). Applicant respectfully submits that this rejection was in error, and that Claims 2-3 and 13-14 are patentable over the cited combination. In this regard, the Examiner has failed to establish a *prima facie* case of obviousness because the references, by themselves or in combination, fail to teach or suggest the subject matter of the claims rejected under 35 U.S.C. § 103(a) and there is no motivation for making the proposed combination.

Claims 2-3 depend, directly or indirectly, from Claim 1. Claims 13-14 depend, directly or indirectly, from Claim 12. The deficiencies of Walker as a teaching reference with respect to Claim 1 and Claim 12 are discussed above and are incorporated herein by reference. Marks does not cure these deficiencies. Further, Marks does not teach or suggest the features recited in Claims 2-3 or Claims 13-14. Critically, although Marks describes a gaming tournament, absent

from Marks is any discussion regarding team members or teammates. There is no suggestion in Marks of calculating finishes for individual players based on the play of their teammates.

Thus, Walker, Marks and their combination do not teach or fairly suggest the subject matter of Claims 2-3 and 13-14. Even if Walker and Marks were combined, the subject matter of Claims 2-3 and 13-14 would not result. Unmotivated changes, such as incorporating team members or teammates to Marks, would be necessary to achieve the subject matter of Applicant's claims. Accordingly, Applicant respectfully submits that the rejection of Claims 2-3 and 13-14 was in error.

CONCLUSION

For the reasons stated above, Applicant respectfully submits that the final rejection of Claims 1-5, 7-16 and 18-20 was in error, and that these claims should be allowed. Accordingly, Applicant respectfully urges the Board to reverse the Examiner's final rejection of these claims.

The fees required by the filing of this appeal were tendered with Appellant's Appeal Brief filed on September 24, 2007. No additional fee or extension of time is believed to be required; however, in the event an additional fee or extension of time is required, please charge that fee or extension of time required to our Deposit Account No. 23-0830.

Respectfully submitted,

/Karen J. Sepura/

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CLAIMS APPENDIX

1. A method for playing a team gaming tournament comprising, in combination, the steps of:
 - permitting a plurality of players to enter a live poker gaming tournament to play against one another;
 - forming a plurality of teams of at least one player from said plurality of players entered in said gaming tournament; and
 - calculating a placement finish for each of said plurality of teams in said gaming tournament in conformity with a predetermined formula having a dependence on both a number of players on each of said plurality of teams and a performance of each said plurality of players.
2. The method of Claim 1 wherein said calculation of said placement finish comprising the steps of:
 - assigning a finish number to each said plurality of players, said finish number being equivalent to an order that each said plurality of players is eliminated from said tournament relative to other said plurality of players;
 - assigning a finish equalization number to each said plurality of teams, said finish equalization number being equivalent to a maximum number of players allowed per each said plurality of teams divided by an actual number of players per each said plurality of teams;
 - assigning an equalization number to each said plurality of players, said equalization number being equivalent to a multiplication of said finish number of each said plurality of players of a team and said finish equalization number of said team; and
 - calculating a team placement finish, wherein each said plurality of teams having a placement finish equivalent to a sum of said equalization number for each of said plurality of

players of each said plurality of teams, wherein a higher number corresponds to a higher team placement finish.

3. The method of Claim 2 further comprising the step of assigning said finish number only to each said plurality of players finishing in a predetermined number of places in said gaming tournament.

4. The method of Claim 1 further comprising the steps of:

receiving an entrance fee from at least one of said plurality of players and said plurality of teams in order for each said plurality of teams to enter said gaming tournament; and

paying at least one of said plurality of teams and at least one of said plurality of players an award in conformity with at least one of a performance of each said plurality of teams and a performance of each said plurality of players, said award in conformity with a percentage of a total amount of said entrance fees received.

5. The method of Claim 4 further comprising the steps of:

paying a predetermined amount of said percentage as an award to teams having at least two players; and paying a predetermined amount of said percentage as an award to teams having one player.

6. (Canceled)

7. The method of Claim 1 wherein said poker tournament comprises at least one poker game of at least one of Texas Hold'em, Seven Card Stud Hi, Seven Card Stud Hi/Low, Five Card Stud, Omaha Hi, and Omaha Hi/Low.

8. The method of Claim 1 further comprising the step of limiting a number of said plurality of players to enter said gaming tournament to a predetermined number.

9. The method of Claim 1 further comprising the step of requiring each said plurality of teams to comprise a predetermined minimum number of players.

10. The method of Claim 1 further comprising the step of limiting each said plurality of teams to a predetermined maximum number of players.

11. A method for playing a team gaming tournament comprising, in combination, the steps of:

 providing a computer network including a server and at least one end-user computer coupled to said server via a network connection;

 wherein said end-user computer has a graphical display portion adapted to display a browser window;

 displaying a live game of a poker gaming tournament in said browser window;

 permitting a plurality of users to enter said game of said gaming tournament to play against one another;

 forming a plurality of teams of at least one user from said plurality of users entered in said gaming tournament;

sending user input from said plurality of users to said server; and
calculating a placement finish for each of said plurality of teams in said gaming
tournament in conformity with a predetermined formula having dependence on both a number of
users on each of said plurality of teams and a performance of each said plurality of users.

12. A server for providing a computer gaming tournament, comprising, in combination:
 - a memory for storing program instructions and data;
 - a processor coupled to said memory for executing said program instructions, wherein said program instructions include program instructions for:
 - displaying a browser window;
 - displaying a live game of a poker gaming tournament in said browser window;
 - permitting a plurality of users to enter said game of said gaming tournament to play against one another;
 - forming a plurality of teams of at least one user from said plurality of users entered in said gaming tournament;
 - receiving indications of user input from a plurality of user computers; and
 - calculating a placement finish for each said plurality of teams in said gaming tournament in conformity with a predetermined formula having dependence on both a number of users on each said plurality of teams and a performance of each said plurality of users.

13. The server of Claim 12 wherein said program instructions further comprise program instructions for:

assigning a finish number to each said plurality of players, said finish number being equivalent to an order that each said plurality of users is eliminated from said tournament relative to other said plurality of users;

assigning a finish equalization number to each said plurality of teams, said finish equalization number being equivalent to a maximum number of users allowed per each said plurality of teams divided by an actual number of users per each said plurality of teams;

assigning an equalization number to each said plurality of users, said equalization number being equivalent to a multiplication of said finish number of each said plurality of users of a team and said finish equalization number of said team; and

calculating a placement finish, wherein each said plurality of teams having a placement finish equivalent to a sum of said equalization number for each of said plurality of users of each said plurality of teams, wherein a higher number corresponds to a higher team placement finish.

14. The server of Claim 13 wherein said program instructions further comprise program instructions for assigning said finish number only to each said plurality of users finishing in a predetermined number of places in said gaming tournament.

15. The server of Claim 12 wherein said program instructions further comprise program instructions for:

receiving an entrance fee from at least one of said plurality of users and said plurality of teams in order for each said plurality of teams to enter said gaming tournament; and

paying at least one of said plurality of teams and at least one of said plurality of users an award in conformity with at least one of a performance of each said plurality of teams and a performance of each said plurality of users, said award in conformity with a percentage of a total amount of said entrance fees received.

16. The server of Claim 15 wherein said program instructions further comprise program instructions for:

paying a predetermined amount of said percentage as an award to teams having at least two users; and

paying a predetermined amount of said percentage as an award to teams having one user.

17. (Canceled)

18. The server of Claim 12 wherein said program instructions further comprise program instructions for said poker tournament comprising at least one poker game of at least one of Texas Hold'em, Seven Card Stud Hi, Seven Card Stud Hi/Low, Five Card Stud, Omaha Hi, and Omaha Hi/Low.

19. The server of Claim 12 wherein said program instructions further comprise program instructions for requiring each said plurality of teams to comprise a predetermined minimum number of users.
20. The server of Claim 12 wherein said program instructions further comprise program instructions for limiting each said plurality of teams to a predetermined maximum number of users.

EVIDENCE APPENDIX

A declaration submitted in accordance with 37 C.F.R. § 1.132, filed on December 18, 2006, follows.

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Commissioner for Patents
P.O. Box 1450
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Examiner Karkhanis:

I, Richard Fitzhugh, declare as follows:

1. I have worked in the gaming industry for more than eighteen (18) years, including twelve (12) years for Station Casinos, whose primary business is video poker. In addition, I have been employed as a video poker consultant for Harrah's casino. Currently, I am Corporate Vice-President for Slot Strategy for American Casino Entertainment.
2. Based upon all of my years of experience in the gaming industry generally and the poker industry specifically, I can unequivocally state that the games of video poker and live poker are not at all the same. The explosion in popularity that has occurred with live poker is in large part due to the ability for one player to "bluff" another player. A first player's ability to deceive an opponent into believing that the first player holds cards having a value contrary to their actual value is the critical dramatic element to live poker that is missing from video or slot poker. In video or slot poker, there is no deception and no opponent to deceive. Bluffing is considered by many to be an art form, a skill that raises the game of live poker beyond the video poker's mere game of statistics to a true game of wits. It is for this and other reasons that live poker (whether played in person or online) has reached such a level of popularity beyond video poker.
3. I further declare that all statements made herein are of my own knowledge and all statements made on information or belief are believed to be true; and further that these statements are made with the knowledge that willful and false statements and the like so made are punishable by fine or imprisonment or both under § 1001 of Title 18 of the United States Code and that such willful and false statements may jeopardize the validity of the above-referenced application and any patent issuing therefrom.

FURTHER DECLARANT SAYETH NOT.


Richard Fitzhugh

12-18-06
Date

RELATED PROCEEDINGS INDEX

None.